

## SENATE BILL No. 32

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-14-3; IC 5-28.

**Synopsis:** Economic development incentive accountability. Adds various job and employee definitions to the Indiana economic development corporation (IEDC) laws. Requires that all records related to taxpayer funded economic development incentives must be disclosed under the open records law. Requires that the IEDC's annual job creation incentives and compliance report must be published on the Indiana transparency portal Internet web site. Requires the IEDC and the department of state revenue to compile information on all job creation incentives granted, including the total amount of uncollected or diverted state tax revenues resulting from each incentive, and requires that this information must be included as part of the IEDC's annual job creation incentives and compliance report. Requires the IEDC to recapture job creation incentives from a recipient that: (1) fails to make the level of capital investment; (2) fails to create or retain the promised number of jobs; or (3) pays less in wages; than specified in an incentive agreement. Requires the IEDC to compile information on all recapture activities and incentives recouped from unfulfilled commitments and to include the information as part of the IEDC's annual job creation incentives and compliance report. Requires incentive recipients to prepare an annual compliance report on the number of jobs created or retained, employee pay, and various other information concerning the use of the incentives, and requires the IEDC to compile this information and include it in the IEDC's annual job creation incentives and compliance report. Repeals and replaces the definition of "job creation incentive" without change to maintain alphabetical order.

**Effective:** July 1, 2016.

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**Mrvan**

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January 5, 2016, read first time and referred to Committee on Commerce & Technology.

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Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## SENATE BILL No. 32

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 5-14-3-3.4 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]: **Sec. 3.4. Any information that is provided to the Indiana**  
4 **economic development corporation in an incentive recipient's**  
5 **annual compliance report under IC 5-28-28-11 must be available**  
6 **for inspection and copying under section 3 of this chapter.**

7       SECTION 2. IC 5-14-3-4, AS AMENDED BY P.L.181-2015,  
8 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2016]: Sec. 4. (a) The following public records are excepted  
10 from section 3 of this chapter and may not be disclosed by a public  
11 agency, unless access to the records is specifically required by a state  
12 or federal statute or is ordered by a court under the rules of discovery:

- 13       (1) Those declared confidential by state statute.  
14       (2) Those declared confidential by rule adopted by a public  
15       agency under specific authority to classify public records as  
16       confidential granted to the public agency by statute.  
17       (3) Those required to be kept confidential by federal law.



(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of a state educational institution, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8.

(10) Application information declared confidential by the board of the Indiana economic development corporation under IC 5-28-16.

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) The following information that is part of a foreclosure action subject to IC 32-30-10.5:

(A) Contact information for a debtor, as described in IC 32-30-10.5-8(d)(1)(B).

(B) Any document submitted to the court as part of the debtor's loss mitigation package under IC 32-30-10.5-10(a)(3).

(14) The following information obtained from a call made to a fraud hotline established under IC 36-1-8-8.5:

(A) The identity of any individual who makes a call to the fraud hotline.

(B) A report, transcript, audio recording, or other information concerning a call to the fraud hotline.

However, records described in this subdivision may be disclosed to a law enforcement agency, the attorney general, the inspector general, the state examiner, or a prosecuting attorney.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:



(1) Investigatory records of law enforcement agencies. Law enforcement agencies may share investigatory records with a person who advocates on behalf of a crime victim, including a victim advocate (as defined in IC 35-37-6-3.5) or a victim service provider (as defined in IC 35-37-6-5), for the purposes of providing services to a victim or describing services that may be available to a victim, without the law enforcement agency losing its discretion to keep those records confidential from other records requesters. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, a local economic development organization (as defined in IC 5-28-11-2(3)), or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the ports of Indiana, the Indiana finance authority, an economic development commission, or a governing body of a political subdivision to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely



represents the terms of the final offer.

(D) Notwithstanding clause (A), an incentive agreement with an incentive recipient shall be available for inspection and copying under section 3 of this chapter after the date the incentive recipient and the Indiana economic development corporation execute the incentive agreement regardless of whether negotiations are in progress with the recipient after that date regarding a modification or extension of the incentive agreement.

**This subdivision does not apply to any information submitted by a recipient of an incentive granted by the Indiana economic development corporation to comply with the reporting requirements of IC 5-28-28-11.**

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a record keeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency



or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of the donor's identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety



1 by exposing a vulnerability to terrorist attack. A record described  
2 under this subdivision includes:

- 3 (A) a record assembled, prepared, or maintained to prevent,
- 4 mitigate, or respond to an act of terrorism under IC 35-47-12-1
- 5 or an act of agricultural terrorism under IC 35-47-12-2;
- 6 (B) vulnerability assessments;
- 7 (C) risk planning documents;
- 8 (D) needs assessments;
- 9 (E) threat assessments;
- 10 (F) intelligence assessments;
- 11 (G) domestic preparedness strategies;
- 12 (H) the location of community drinking water wells and
- 13 surface water intakes;
- 14 (I) the emergency contact information of emergency
- 15 responders and volunteers;
- 16 (J) infrastructure records that disclose the configuration of
- 17 critical systems such as communication, electrical, ventilation,
- 18 water, and wastewater systems;
- 19 (K) detailed drawings or specifications of structural elements,
- 20 floor plans, and operating, utility, or security systems, whether
- 21 in paper or electronic form, of any building or facility located
- 22 on an airport (as defined in IC 8-21-1-1) that is owned,
- 23 occupied, leased, or maintained by a public agency. A record
- 24 described in this clause may not be released for public
- 25 inspection by any public agency without the prior approval of
- 26 the public agency that owns, occupies, leases, or maintains the
- 27 airport. The public agency that owns, occupies, leases, or
- 28 maintains the airport:
- 29 (i) is responsible for determining whether the public
- 30 disclosure of a record or a part of a record has a reasonable
- 31 likelihood of threatening public safety by exposing a
- 32 vulnerability to terrorist attack; and
- 33 (ii) must identify a record described under item (i) and
- 34 clearly mark the record as "confidential and not subject to
- 35 public disclosure under IC 5-14-3-4(b)(19)(J) without
- 36 approval of (insert name of submitting public agency)"; and
- 37 (L) the home address, home telephone number, and emergency
- 38 contact information for any:
- 39 (i) emergency management worker (as defined in
- 40 IC 10-14-3-3);
- 41 (ii) public safety officer (as defined in IC 35-47-4.5-3);
- 42 (iii) emergency medical responder (as defined in



IC 16-18-2-109.8); or

(iv) advanced emergency medical technician (as defined in IC 16-18-2-6.5).

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(22) Notwithstanding subdivision (8)(A), the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first employment of a law enforcement officer who is operating in an undercover capacity.

(23) Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) a law enforcement officer (as defined in IC 35-31.5-2-185);

(iii) a judge (as defined in IC 33-38-12-3);

(iv) the victim of a crime; or

(v) a family member of a correctional officer, law enforcement officer (as defined in IC 35-31.5-2-185), judge (as defined in IC 33-38-12-3), or victim of a crime; or

(B) concern or could affect the security of a jail or correctional facility.

(24) Information concerning an individual less than eighteen (18) years of age who participates in a conference, meeting, program,





or activity conducted or supervised by a state educational institution, including the following information regarding the individual or the individual's parent or guardian:

(A) Name.

(B) Address.

(C) Telephone number.

(D) Electronic mail account address.

(25) Criminal intelligence information.

(26) The following information contained in a report of unclaimed property under IC 32-34-1-26 or in a claim for unclaimed property under IC 32-34-1-36:

(A) date of birth;

(B) driver's license number;

(C) taxpayer identification number;

(D) employer identification number; or

(E) account number.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption or patient medical records, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Only the content of a public record may form the basis for the adoption by any public agency of a rule or procedure creating an exception from disclosure under this section.

(f) Except as provided by law, a public agency may not adopt a rule or procedure that creates an exception from disclosure under this section based upon whether a public record is stored or accessed using paper, electronic media, magnetic media, optical media, or other information storage technology.

(g) Except as provided by law, a public agency may not adopt a rule or procedure nor impose any costs or liabilities that impede or restrict the reproduction or dissemination of any public record.

(h) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 3. IC 5-28-2-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 4.1. "Full-time employee" has the meaning set forth**



1 in IC 6-3.1-13-4.

2 SECTION 4. IC 5-28-2-4.2 IS ADDED TO THE INDIANA CODE  
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2016]: Sec. 4.2. (a) "Full-time, permanent job" means  
5 employment in which a new employee works for the recipient of a  
6 job creation incentive as a full-time employee without any expected  
7 date of termination.

8 (b) The term does not include a temporary job.

9 SECTION 5. IC 5-28-2-4.5 IS ADDED TO THE INDIANA CODE  
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2016]: Sec. 4.5. "Job creation incentive" means a tax credit, tax  
12 deduction, grant, loan, or loan guarantee that a statute authorizes  
13 the state or an instrumentality of the state, excluding any political  
14 subdivision or other unit of local government, to award or approve  
15 for the purpose of encouraging the creation of new jobs in Indiana.

16 SECTION 6. IC 5-28-2-4.6 IS ADDED TO THE INDIANA CODE  
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
18 1, 2016]: Sec. 4.6. "Job creation incentive agreement" or "incentive  
19 agreement" means any agreement executed by the corporation and  
20 the recipient of a job creation incentive setting forth the terms and  
21 conditions of any job creation incentive to be provided to the  
22 recipient.

23 SECTION 7. IC 5-28-2-4.7 IS ADDED TO THE INDIANA CODE  
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
25 1, 2016]: Sec. 4.7. "New employee" means a full-time employee  
26 who:

27 (1) is first employed by the recipient of a job creation  
28 incentive at the specific project site that is the subject of the  
29 job creation incentive agreement executed by the corporation  
30 and the applicant; and

31 (2) is employed by the recipient of a job creation incentive  
32 after the recipient enters into the job creation incentive  
33 agreement.

34 SECTION 8. IC 5-28-2-4.8 IS ADDED TO THE INDIANA CODE  
35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
36 1, 2016]: Sec. 4.8. "Part-time job" means employment in which a  
37 new employee works for the recipient of a job creation incentive  
38 for fewer hours each week than the number of hours necessary to  
39 be considered a full-time employee.

40 SECTION 9. IC 5-28-2-4.9 IS ADDED TO THE INDIANA CODE  
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
42 1, 2016]: Sec. 4.9. "Retained employee" means any employee:



1           **(1) who has a full-time or full-time equivalent job at a specific**  
 2           **facility or site;**

3           **(2) the continuance of whose job is threatened by a specific**  
 4           **and demonstrable threat, as specified by the applicant in the**  
 5           **application for a job creation incentive; and**

6           **(3) whose job is preserved.**

7           SECTION 10. IC 5-28-2-5.5 IS REPEALED [EFFECTIVE JULY  
 8           1, 2016]. Sec. 5.5: "Job creation incentive" means a tax credit, tax  
 9           deduction, grant, loan, or loan guarantee that a statute authorizes the  
 10          state or an instrumentality of the state (excluding any political  
 11          subdivision or other unit of local government) to award or approve for  
 12          the purpose of encouraging the creation of new jobs in Indiana.

13          SECTION 11. IC 5-28-2-6.5 IS ADDED TO THE INDIANA CODE  
 14          AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 15          1, 2016]: Sec. 6.5. "Temporary job" means employment in which  
 16          a new employee is hired for a specific duration of time or season.

17          SECTION 12. IC 5-28-5-9, AS ADDED BY P.L.4-2005, SECTION  
 18          34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 19          2016]: Sec. 9. (a) Except as specifically provided by law, the  
 20          corporation and the board are subject to IC 5-14-1.5 and IC 5-14-3.

21          (b) All records required to be prepared or maintained under  
 22          this article, including any cost analyses, audits, recipient  
 23          compliance reports, and any other records or proceedings of the  
 24          corporation, must be disclosed as provided by IC 5-14-3. In  
 25          addition, if the corporation contracts with an entity to perform a  
 26          cost analysis as part of a determination by the corporation of  
 27          whether to provide a job creation incentive and the estimated  
 28          contract price exceeds twenty-five thousand dollars (\$25,000), that  
 29          cost analysis must be disclosed as provided by IC 5-14-3.

30          SECTION 13. IC 5-28-6-2, AS AMENDED BY P.L.6-2012,  
 31          SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 32          JULY 1, 2016]: Sec. 2. (a) The corporation shall develop and promote  
 33          programs designed to make the best use of Indiana resources to ensure  
 34          a balanced economy and continuing economic growth for Indiana, and,  
 35          for those purposes, may do the following:

36               (1) Cooperate with federal, state, and local governments and  
 37               agencies in the coordination of programs to make the best use of  
 38               Indiana resources, based on a statewide study to determine  
 39               specific economic sectors that should be emphasized by the state  
 40               and by local economic development organizations within  
 41               geographic regions in Indiana, and encourage collaboration with  
 42               local economic development organizations within geographic



regions in Indiana and with the various state economic development organizations within the states contiguous to Indiana.

(2) Receive and expend funds, grants, gifts, and contributions of money, property, labor, interest accrued from loans made by the corporation, and other things of value from public and private sources, including grants from agencies and instrumentalities of the state and the federal government. The corporation:

(A) may accept federal grants for providing planning assistance, making grants, or providing other services or functions necessary to political subdivisions, planning commissions, or other public or private organizations;

(B) shall administer these grants in accordance with the terms of the grants; and

(C) may contract with political subdivisions, planning commissions, or other public or private organizations to carry out the purposes for which the grants were made.

(3) Direct that assistance, information, and advice regarding the duties and functions of the corporation be given to the corporation by an officer, agent, or employee of the executive branch of the state. The head of any other state department or agency may assign one (1) or more of the department's or agency's employees to the corporation on a temporary basis or may direct a division or an agency under the department's or agency's supervision and control to make a special study or survey requested by the corporation.

(b) The corporation shall perform the following duties:

(1) Develop and implement industrial development programs to encourage expansion of existing industrial, commercial, and business facilities in Indiana and to encourage new industrial, commercial, and business locations in Indiana.

(2) Assist businesses and industries in acquiring, improving, and developing overseas markets and encourage international plant locations in Indiana. The corporation, with the approval of the governor, may establish foreign offices to assist in this function.

(3) Promote the growth of minority business enterprises by doing the following:

(A) Mobilizing and coordinating the activities, resources, and efforts of governmental and private agencies, businesses, trade associations, institutions, and individuals.

(B) Assisting minority businesses in obtaining governmental or commercial financing for expansion or establishment of



- 1 new businesses or individual development projects.
- 2 (C) Aiding minority businesses in procuring contracts from
- 3 governmental or private sources, or both.
- 4 (D) Providing technical, managerial, and counseling assistance
- 5 to minority business enterprises.
- 6 (4) Assist the office of the lieutenant governor in:
- 7 (A) community economic development planning;
- 8 (B) implementation of programs designed to further
- 9 community economic development; and
- 10 (C) the development and promotion of Indiana's tourist
- 11 resources.
- 12 (5) Assist the secretary of agriculture and rural development in
- 13 promoting and marketing of Indiana's agricultural products and
- 14 provide assistance to the director of the Indiana state department
- 15 of agriculture.
- 16 (6) With the approval of the governor, implement federal
- 17 programs delegated to the state to carry out the purposes of this
- 18 article.
- 19 (7) Promote the growth of small businesses by doing the
- 20 following:
- 21 (A) Assisting small businesses in obtaining and preparing the
- 22 permits required to conduct business in Indiana.
- 23 (B) Serving as a liaison between small businesses and state
- 24 agencies.
- 25 (C) Providing information concerning business assistance
- 26 programs available through government agencies and private
- 27 sources.
- 28 (8) Establish a public information page on its current Internet site
- 29 on the world wide web. The page must provide the following:
- 30 ~~(A) By program, cumulative information on the total amount~~
- 31 ~~of incentives awarded, the total number of companies that~~
- 32 ~~received the incentives and were assisted in a year, and the~~
- 33 ~~names and addresses of those companies:~~
- 34 **(A) The annual job creation incentives and compliance**
- 35 **report required by IC 5-28-28-5.**
- 36 (B) A mechanism on the page whereby the public may request
- 37 further information online about specific programs or
- 38 incentives awarded.
- 39 (C) A mechanism for the public to receive an electronic
- 40 response.
- 41 (c) The corporation may do the following:
- 42 (1) Disseminate information concerning the industrial,



commercial, governmental, educational, cultural, recreational, agricultural, and other advantages of Indiana.

(2) Plan, direct, and conduct research activities.

(3) Assist in community economic development planning and the implementation of programs designed to further community economic development.

SECTION 14. IC 5-28-6-6, AS AMENDED BY P.L.175-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. The corporation shall require an applicant for a job creation incentive to be granted by the corporation after March 31, 2010, to enter into ~~an~~ **a job creation incentive** agreement with the corporation as a condition of receiving the incentive. Subject to IC 5-28-28-8, the agreement must include the following:

(1) The applicant's agreement regarding the following:

(A) The number of individuals that are expected to be employed by the applicant, including the number of employees who will be hired, retained, or trained during the duration of the agreement.

(B) If a financial investment by an applicant is a condition for providing an incentive, the amount of the financial investment that the applicant expects to make in Indiana as a result of the project for which the incentive is granted.

(2) A requirement that the applicant shall file with the compliance officer an annual compliance report, ~~detailing the applicant's compliance, or progress toward compliance, with subdivision (1):~~ **as required by IC 5-28-28-11.**

(3) A provision that notifies the applicant that the applicant is subject to a determination of the corporation under this subdivision. The corporation, after a finding that the applicant is employing fewer individuals than the applicant agreed to employ or that the applicant has not made the financial investment agreed to under subdivision (1), subject to any confidentiality laws, shall hold a hearing to determine if the applicant shall be required to pay back to the state a part of the incentive granted to the applicant under the agreement. The penalty imposed must be a matter of public record and must reflect in a fair and balanced way the amount of incentive received.

(4) A ~~requirement that recapture~~ **provision that requires** the applicant ~~will to~~ pay back to the state the **job creation** incentive that has been received by the applicant if the applicant:

(A) moves or closes;

(B) **does not make the level of capital investment specified**



1 by the applicant in the application for the job creation  
2 incentive;

3 (C) employs fewer individuals than specified by the  
4 applicant in the application for the job creation incentive;  
5 or

6 (D) pays less in wages than specified by the applicant in the  
7 application for the job creation incentive.

8 SECTION 15. IC 5-28-28-5, AS AMENDED BY P.L.175-2013,  
9 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
10 JULY 1, 2016]: Sec. 5. (a) Beginning February 1, 2008, the corporation  
11 shall:

12 (1) ~~submit an economic~~ **prepare an annual job creation**  
13 incentives and compliance report **for submission to:**

14 (A) the governor; and

15 (B) the legislative council in an electronic format under  
16 IC 5-14-6; and

17 (2) publish the report on the corporation's **Internet web site and**  
18 **on the Indiana transparency portal** Internet web site.  
19 on the schedule specified in subsection (b).

20 (b) Before August 1, 2013, the corporation shall submit and publish  
21 an incentives and compliance report that provides updated information  
22 for active incentive agreements approved and awarded after January 1,  
23 2005, through June, 30, 2013. After December 31, 2013, the  
24 corporation shall submit and publish before February 1 of each year an  
25 **annual job creation** incentives and compliance report that provides  
26 updated information for active incentive agreements approved and  
27 awarded after January 1, 2005, through the immediately preceding  
28 calendar year.

29 SECTION 16. IC 5-28-28-6, AS AMENDED BY P.L.2-2014,  
30 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
31 JULY 1, 2016]: Sec. 6. The ~~economic~~ **annual job creation** incentives  
32 and compliance report required under section 5 of this chapter must  
33 include at least the following:

34 (1) The total for each of the following:

35 (A) The number and amount of tax credits, loans, and grants  
36 contractually awarded by the corporation. **This information**  
37 **must also include the total amount of uncollected or**  
38 **diverted state tax revenues resulting from each tax credit,**  
39 **as reported to the department of state revenue on tax**  
40 **returns filed during the state fiscal year that ends**  
41 **immediately before the due date of the report. Before July**  
42 **15 each year, the department of state revenue shall submit**



1 **to the corporation the information necessary for the**  
 2 **corporation to include these total amounts in the**  
 3 **corporation's report.**

4 (B) The amount of investments made by the recipients of the  
 5 tax credits, loans, and grants.

6 (C) The number of actual jobs created and the number of jobs  
 7 expected through the reporting year, as reviewed by an  
 8 independent auditing firm chosen by the corporation.

9 (D) The amount of recaptured incentives for the reporting year  
 10 and the total number of recipients.

11 (E) The number and amount of tax credits claimed for the  
 12 reporting year, as reported by the department of state revenue  
 13 to the corporation by December 31 of each year.

14 (2) With respect to each recipient of a tax credit, loan, or grant  
 15 referred to in subdivision (1), the following:

16 (A) The name, county, and municipality (if any) of the  
 17 recipient.

18 (B) The amount of tax credits certified to the recipient, and the  
 19 amount of grants and loans actually paid out, during the term  
 20 of the agreement.

21 (C) The purpose of the tax credit, loan, or grant.

22 (D) The performance goals for the reporting year, including  
 23 the following:

24 (i) Numbers of employees to be hired, retained, or trained.

25 (ii) If a financial investment by the recipient was a condition  
 26 for providing an incentive, the amount of the financial  
 27 investment that the recipient expects to make in Indiana as  
 28 a result of the project for which the incentive was granted.

29 (E) Certification by the corporation that the recipient is  
 30 complying with the terms of the incentive agreement.

31 **(3) A summary of the information submitted by certified**  
 32 **technology parks as part of the corporation's review under**  
 33 **IC 36-7-32-11.**

34 **(4) All data in all compliance reports submitted under section**  
 35 **11 of this chapter.**

36 **(5) By program, cumulative information on the total amount**  
 37 **of job creation incentives awarded, the total number of**  
 38 **companies that received the job creation incentives and were**  
 39 **assisted in a year, and the names and addresses of those**  
 40 **companies.**

41 SECTION 17. IC 5-28-28-7, AS AMENDED BY P.L.175-2013,  
 42 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE





JULY 1, 2016]: Sec. 7. (a) If, in the course of compiling information to complete ~~a~~ **an annual job creation incentives and compliance** report required by section 5 of this chapter or upon the receipt of any other information concerning noncompliance with the terms and conditions of an incentive granted by the corporation, the corporation determines that a recipient of an incentive awarded by the corporation has not complied with the terms of the incentive agreement, the corporation shall take the actions required under subsections (b) and (d).

(b) If the incentive is a grant or loan awarded before April 1, 2010, the corporation shall determine:

- (1) whether there was good cause for the noncompliance; and
- (2) whether the recipient is in default.

If in the judgment of the corporation there is not good cause for any noncompliance discovered under subsection (a), the corporation may seek a refund or arrange other methods of reclaiming the grant or loan from the recipient. If the corporation does seek a refund or otherwise reclaims a grant or loan from the recipient under this section, the amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.

(c) Subsection (b) does not apply to a recipient of a grant or loan if:

- (1) the grant or loan has been disbursed on a pro rata basis; and
- (2) in the judgment of the corporation, the recipient's performance in relation to the recipient's performance goals equals or exceeds the ratio of the amount of the recipient's actual benefit from the grant or loan to the total amount of the grant or loan originally contemplated in the grant or loan award.

(d) If the incentive granted by the corporation was awarded after March 31, 2010, the corporation shall seek a refund or arrange other methods of reclaiming the value of the incentive granted by the corporation from the recipient. The amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the corporation.

SECTION 18. IC 5-28-28-8, AS ADDED BY P.L.110-2010, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) As used in this section, "recapture provision" means language that requires the recipient of ~~an~~ **a job creation** incentive to repay some part of the incentive.

(b) The corporation may waive or modify a recapture provision of this article or an agreement made with a person to whom the corporation has awarded ~~an~~ **a job creation** incentive if the corporation determines that the recipient of ~~an~~ **the** incentive awarded by the corporation has failed to meet a condition for receiving the incentive



because of circumstances beyond the recipient's control, including:

- (1) natural disaster;
- (2) unforeseen industry trends;
- (3) lack of available labor force;
- (4) loss of a major supplier or market; or
- (5) another circumstance beyond the recipient's control, as determined by the corporation.

SECTION 19. IC 5-28-28-9, AS ADDED BY P.L.110-2010, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) Beginning in 2010, the **economic annual job creation** incentives and compliance report required under section 5 of this chapter must include **an annual report a part** containing a summary of **annual** statistics on the effectiveness of and compliance with all incentives granted by the corporation. The **part of the job creation incentives and compliance** report required by this section must describe:

- (1) the overall compliance with the terms and conditions of incentives provided; and
- (2) penalties imposed for failure to comply with the terms and conditions of incentives provided, **including a description of the outcomes and effectiveness of recapture provisions, organized by the job creation incentive program, along with at least the following information:**

(A) The total number of companies receiving a job creation incentive.

(B) The total number of recipients in violation of a job creation incentive agreement.

(C) The total number of recapture efforts initiated.

(D) The total number of recapture efforts completed.

(E) The number of recapture waivers granted.

The report must also be submitted to the general assembly in an electronic format under IC 5-14-6.

(b) Upon request, the corporation shall make available **as a public record under IC 5-14-3:**

- (1) information specifying each person's compliance with its incentive agreement and any incentive that had to be reduced or paid back as a result of noncompliance with an incentive agreement;
- (2) information stating, for each incentive recipient, the total incentive provided for each job created, computed from the date the incentive is granted through June 30 of the year of the report;
- (3) information concerning all waivers or modifications under



section 8 of this chapter; and  
 (4) information describing all hearings and determinations under  
 IC 5-28-6-6.

SECTION 20. IC 5-28-28-11 IS ADDED TO THE INDIANA  
 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2016]: **Sec. 11. (a) Before July 15 each year,  
 each recipient of a job creation incentive shall submit to the  
 corporation an annual compliance report covering the immediately  
 preceding July 1 through June 30 period. A recipient that is a  
 party to multiple job creation incentive agreements for a single  
 project site may file a consolidated compliance report. A  
 compliance report must include at least the following information:**

- (1) Each application tracking number.**
- (2) The recipient's:**
  - (A) office mailing address;**
  - (B) telephone number; and**
  - (C) six (6) digit North American Industry Classification  
 System (NAICS) code assigned to industries in the NAICS  
 Manual of the United States Office of Management and  
 Budget;**
- and the name of the recipient's chief officer or authorized  
 designee for the specific project site for which the job creation  
 incentive was approved.**
- (3) The name of the job creation incentive program and value  
 of the job creation incentive that was approved by the  
 corporation.**
- (4) The total number of the recipient's employees at the  
 specific project site on the date on which the application was  
 submitted to the corporation, and the total number of the  
 recipient's employees at the specific project site on the date of  
 the report, including, for each date:**
  - (A) the number of employees with full-time, permanent  
 jobs;**
  - (B) the number of employees with part-time jobs; and**
  - (C) the number of employees with temporary jobs;**
- and a computation of the increase or decrease in the number  
 of employees within each category set forth in clauses (A)  
 through (C) between the date of submission of the application  
 and the date of the report.**
- (5) The number of:**
  - (A) jobs for new employees that the recipient promised in  
 the job creation incentive agreement the recipient would**



- 1           create; and
- 2           **(B) jobs for retained employees that the recipient promised**
- 3           **in the job creation incentive agreement the recipient would**
- 4           **retain;**
- 5           **broken down by full-time, permanent jobs, part-time jobs,**
- 6           **and temporary jobs.**
- 7           **(6) A declaration of whether the recipient is in compliance**
- 8           **with each term and condition of the job creation incentive**
- 9           **agreement.**
- 10          **(7) The following for the full-time, permanent jobs that the**
- 11          **recipient created or retained as a result of the job creation**
- 12          **incentive:**
- 13           **(A) A detailed list of:**
- 14           **(i) the occupations; or**
- 15           **(ii) job classifications;**
- 16           **of the jobs.**
- 17           **(B) A schedule of the starting dates for the new employees**
- 18           **hired for the jobs.**
- 19           **(C) The actual average wage paid to employees with the**
- 20           **jobs, broken down by occupation or job classification.**
- 21           **(D) The total payroll for new employees and retained**
- 22           **employees with these jobs.**
- 23          **(8) A narrative, if necessary, stating whether and, if so, how**
- 24          **the recipient's use of the job creation incentive during the**
- 25          **reporting year has reduced unemployment at any site in**
- 26          **Indiana.**
- 27          **(9) A certification by the chief officer of the recipient or the**
- 28          **chief officer's authorized designee that the information in the**
- 29          **compliance report contains no knowing misrepresentation of**
- 30          **material facts upon which eligibility for the job creation**
- 31          **incentive is based.**
- 32          **(10) Any other information the corporation considers**
- 33          **necessary to ensure compliance with the job creation incentive**
- 34          **program.**
- 35          **(b) The corporation may verify information contained in the**
- 36          **recipient's annual compliance report, including inspecting the**
- 37          **specific project site and inspecting the records of the recipient that**
- 38          **relate to the job creation incentive agreement.**
- 39          **(c) If a recipient of a job creation incentive fails to comply with**
- 40          **subsection (a), the corporation shall suspend all current job**
- 41          **creation incentives being provided to the recipient, effective the**
- 42          **immediately following October 1. In addition, the corporation is**



- 1 **prohibited from completing any current job creation incentive or**
- 2 **providing any future job creation incentive until the corporation**
- 3 **receives proof that the recipient has complied with subsection (a).**

